

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 04-40824

WILBERT ELLIS WILLIAMS,

Chapter 13

Debtor.

Judge Thomas J. Tucker

\_\_\_\_\_ /

**ORDER DENYING DEBTOR'S "MOTION TO REINSTATE  
CHAPTER 13 CASE BANKRUPTCY PROCEEDING" (DOCKET # 32)**

This case is before the Court on Debtor's "Motion to Reinstate Chapter 13 Bankruptcy Proceeding," filed on November 19, 2008 (Docket # 32, the "Motion"), which this Court construes as a motion for reconsideration of the Court's June 20, 2008 Order dismissing this case (Docket # 29, the "June 20 Order"), or alternatively, as a motion for relief from the Court's June 20 Order.

The Court has reviewed the Motion, and finds the Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

In addition, the Court notes the following. Debtor's then-attorney of record (Terri Weik) was served with electronic notice by e-mail with the Trustee's notice to dismiss and the 15-day notice of same, through the Court's ECF system, on the same day the motion was filed (May 21, 2008, Docket # 27). Debtor's motion fails to demonstrate excusable neglect under Fed.R.Civ.P. 60(b)(1)<sup>1</sup> in the Debtor's failure to file a timely response to the Trustee's motion to dismiss. Any neglect or mistake by Debtor's counsel, such as that apparently alleged in the Motion, is generally attributable to the Debtor, for purposes of determining whether any such neglect or

---

<sup>1</sup> This rule applies in this case under Fed.R.Bankr.P. 9024.

mistake was excusable. *See, e.g., Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 396-97 (1993)(in determining whether “excusable neglect” is shown, “the proper focus is upon whether the neglect of [the movants] *and their counsel* was excusable” (italics in original)).

The allegations in the Motion do not establish any valid ground for relief from the order dismissing this case under Fed.R.Civ.P. 60(b), including Rule 60(b)(6), which Debtor cites. “[Fed.R.Civ.P.] 60(b)(6) is to be used ‘only in exceptional or extraordinary circumstances which are not addressed by the first five number clauses of the Rule.’” *Fuller v. Quire*, 916 F.2d 358, 360 (6th Cir. 1990)(citation omitted). The Motion does not allege the kind of extraordinary circumstance contemplated by the Rule 60(b)(6).

Finally, Debtor's Motion was filed five months after this case was dismissed. In light of this, Debtor's Motion fails to demonstrate that his Motion is filed “within a reasonable time” as required by Fed.R.Civ.P. 60(c)(1).

Accordingly,

IT IS ORDERED that the Motion (Docket # 32) is DENIED.

**Signed on November 21, 2008**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**